



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

22. 13
9
4

50.
CR
43

PRESENTED TO THE UNIVERSITY
BY THE RHODES TRUSTEES

522.13 r 9

J A M A I C A .

· T H E S P E E C H

OF

MR. SERJEANT MEREWETHER,

AT

THE BAR OF THE HOUSE OF COMMONS,

AGAINST

T H E B I L L

INTITULED

**“AN ACT to make temporary Provision for the
Government of Jamaica.”**

TUESDAY, 23d APRIL 1839.

L O N D O N :

**CALKIN & BUDD, BOOKSELLERS TO HER MAJESTY, FALL MALL;
SIMPKIN & MARSHALL, STATIONERS' COURT;
AND ALL OTHER BOOKSELLERS.**

1839.

522.13 v. 9.

St.

St. John Myers & Co.

LONDON:
Printed by James, Luke G. & Luke J. Hansard,
near Lincoln's-Inn-Fields.



THE SPEECH.

MR. SPEAKER,

SIR, I have the honour of appearing at this Bar for the 500 petitioners who have subscribed their names to the petition which now lies upon the table; and it is by the indulgence of this House that I now appear on their behalf, to deprecate the passing of that Bill which has formally advanced to its second reading.

Sir, the individuals whom I represent are intimately connected with the Island of Jamaica; many of them were born there; some have spent the most valuable portions of their lives in that island; some have been members of the Assembly, and most have large properties at stake in that country. They therefore, Sir, feel anxiously alive to this subject, and, as they state in their petition, "it is with extreme alarm they have heard of the Bill, which has been introduced into this House."

But, Sir, it is a fortunate circumstance that, being in this country, they are free, to a certain degree, from those strong feelings and those animosities which have been unfortunately stimulated in that colony; and being, as they are, at a distance from it, they are enabled, they hope, to entertain a more moderate and temperate view of the subject than perhaps they might have taken if they had been involved in the discussions which have occurred in Jamaica; and I shall but very ill represent them at your Bar to-night if I do not preserve, in the address which I have the honour to make to this House, that moderation which they feel, and which they would wish to be maintained at your Bar.

I, therefore, appear here, disposed strongly on their part to deprecate the passing of this Bill, but I hope to say and do nothing which can in any degree tend to increase the difficulties, already too great, which surround this unfortunate affair; and I mean undoubtedly to propose to myself such a line of argument as shall keep me strictly and closely to the point which I take it to be my duty to advocate here, and that is, whether Parliament in its wisdom and in its justice should pass such a Bill as the one which is now before the House.

Sir, putting upon myself the restraint which I have proposed, I do not dare to trust myself with a description of this measure; I would rather look to the enactments appearing upon the face of the Bill, to give it its true character, than endeavour myself to describe it by any frame of words; and I shall therefore, without preface, proceed at once to consider the clauses and the import of this Bill, premising only, that my clients do feel extreme anxiety with respect to the fate of that constitution which their ancestors handed down to them; with respect to the effect which will be produced by this Bill upon the institutions they have learned to revere; and, the manner in which it will operate upon laws under which they have so long prospered.

Sir, I perceive that this Bill, in its first clause, proposes to make it for the future, or for a certain limited time, unnecessary that the Assembly of Jamaica, *the representatives of the people* in that island, shall be summoned together by the Governor. The provision is, that "it shall not be necessary to summon the "House of General Assembly of Jamaica, for the despatch of business, or to hold any meeting of the "General Assembly." Such, Sir, is the provision, which, in point of fact, *will destroy the popular part* of the government of Jamaica. It is impossible that in this place—the House of Commons of England—the assembly of the representatives of the people—there can be

the slightest doubt of the extreme importance—the deep-felt interest—the awful responsibility of such a proceeding. Suppose for one moment, Sir, that in this kingdom it was proposed that you, the representatives of the people, should not be summoned together for the space of five years! These, Sir, are fearful considerations; and I feel satisfied that upon this part of the subject I have the honour of addressing a body in which there can hardly be an individual who will not deprecate the necessity for such a measure; and who, if he is obliged to assent to it, will not deplore the necessity for that assent. Consider, Sir, that all that part of the constitution of Jamaica which gives the freeholders of that island a representation in the government of the country, and an authority in the enactment of the laws under which they are to live, is at once to be suspended. I am confident, Sir, that it is not necessary for me to add a word to what I have already said upon this clause, which, I hope, has been distinctly brought before the consideration of the House, and which is the commencing enormity of this violent measure.

Sir, if this House were prevented from meeting to defend the rights of the people—if the Assembly of Jamaica is prevented from assembling together—I ask how will the executive authority of that country be safely or peaceably carried on? Do not you here, as the representatives of England, stand as the great barrier between the authority of the Crown on the one hand and the intemperance of the people on the other? Are you not the great regulating power of the constitution, which keeps in due order the machine of the state? That which you are in this country, the Assembly is in Jamaica. You will put the whole state of civil society in Jamaica in peril, if you suspend the functions of the Assembly. Sir, the consequence of the powers of this House being interfered with—the consequence of the Assembly of Jamaica being interfered with—will be, that all the laws of the country will lose

their vigour—the institutions of the country will be paralyzed—the constitution will be at an end. That would be the ordinary progress of events, and it is the progress of this Bill ; for the second clause, Sir, at once annihilates the whole constitution of Jamaica ! All that was granted originally by the Crown—all that has been confirmed by the sanction of the Parliament, both of this country and of the Assembly in Jamaica ;—all is at one stroke to be levelled the moment this Bill receives the Royal Assent ! At that instant the constitution of Jamaica is at an end !

The second clause of this Bill provides that the Governor, and the council who are to act with him, are to make ordinances for the government of the island ; they have the power of creating and of destroying what laws they think fit ; and the statute rolls of Jamaica may be erased the instant this power is conceded to the Governor and his council :—that Governor and the council being appointed by the mere authority of the Crown, and existing solely as the representatives or advisers of the Crown ; and as I have a right here to state (for it is a necessary power which will be given to the Crown) the Government will have the power of appointing that council as they may think fit, and persons in no degree connected with the island, either by property, official station, responsibility or obligation of any kind, may be appointed members of it :—persons from this country, simply appointed by the Minister of the day, may go out and concur in destroying the existing laws and making and enacting new ones, for that country, with which they have no sympathy, no direct interest, no common feeling.

Consider for a moment, Sir, what would be the effect of such a provision with respect to this country, or any other ; contemplate for a moment any enactment which would destroy our most invaluable privileges—what if Magna Charta were to be repealed—if the Bill of Rights were to be cancelled—if the Habeas Corpus Act were to be suspended—these to us are

familiar ideas ; these are our admired, our sacred, our venerated institutions ; but it is not to be believed that the people of Jamaica have not laws, privileges, and institutions which they cherish as dearly as we cherish ours ; and no doubt the effect of this clause will be, to put within the power of the Governor and the council, selected in the manner I have mentioned, the whole of their institutions, however they may be venerated or esteemed by them. I have merely alluded to the effect which would be produced in this country by such a proceeding :—and I quit that part of the subject immediately, because I know that when I have drawn the attention of the House to it, the intended effect of my argument is produced :—and I am at least confident, that the result of this clause, as respects Jamaica, will be tested by the consideration of what the effect would be if a similar measure were attempted in this country.

Now, Sir, proposing not to weary the House with a tedious and unnecessary detail, I shall not go through the other clauses of this Bill ; they are, more or less, consequences of those two fundamental clauses, and I shall therefore satisfy myself with having drawn the attention of the House to this circumstance, that *the popular part of the constitution of Jamaica is to be suspended*—the laws which are to exist there are to be at the disposal of the Governor and the council,—and in that way is the constitution of Jamaica to be annihilated by this Bill.

Sir, I have already said, and I feel it most strongly, that I cannot at this moment be addressing any individuals who will view this matter otherwise than with the pure and simple consideration of what justice demands at his hands. It is true that this House, ordinarily speaking, does not exercise judicial functions ; but if there ever was a case in which those who had to determine should approach it with all those sacred feelings which belong to the due admi-

nistration of justice, this is one of that description :— and the House is called upon to determine, in the most solemn and considerate manner, whether they will take a step so desperate as the one now proposed to them. I call it emphatically a desperate step, Sir, for undoubtedly to interfere with the constitution of any country is a desperate remedy, to be sanctioned by nothing but an overwhelming necessity. Sir, in the moment of conquest, even if a prostrate country was lying under your feet, you would not deal with it in the manner you are about to do with one of your most fruitful, valuable, and productive colonies. Where have the British arms ever carried along with them the destruction of the laws of the country over which they have spread their victories? The laws and constitution of your vanquished territories have always been held sacred. The rights of conquered countries have been held inviolable, as well upon the grounds of justice and the higher feelings of humanity, as upon the lower considerations of policy. For it is not safe to run counter to the habits and feelings of mankind :—and although you may have the power, you must not arbitrarily destroy their rights. And therefore you will look in vain, Sir, in the whole course of the history of this country, for any period when we have not, in the midst of our conquests, respected the laws and institutions of the conquered. You will look in vain in the whole course of our own history for any periods of peril, turbulence or innovation, which have been followed by such consequences as you are now supposed to be meditating with respect to Jamaica.

Sir, I do not wish to press this more strongly, because I know that when this Bill was presented to the House, it was proposed, as might have been expected, with extreme reluctance by Her Majesty's Government, at whose instance it was laid upon the table. I believe, (and I am bound so to believe, for it would be doing an injus-

tice to any persons to assume the contrary), that it was a sincere feeling of reluctance which accompanied the introduction of this Bill; and I am bound to give credit to the Government that they would not do an act of this description—so formidable in its nature—so serious as to its probable consequences—unless it imagined that there was an overwhelming necessity to justify it.

Indeed, Sir, it would be impossible to look at this measure in any other point of view than in one or other of these two alternatives. Either this must be intended, as was strongly urged by my learned friend last night, (because the effect is such,) as a serious punishment upon this colony for delinquencies of which it has been guilty:—or it must be justified upon the ground of some political necessity. Punishment, I believe, is out of the question; crime is not imputed, accusation is not made; attempt at proof of delinquency there is none:—and, therefore, punishment in that sense of the word must be altogether thrown out of consideration. It is impossible that this measure can have that foundation.

Sir, I should wish to follow the steps of my learned friend in adverting, as we are bound to do, to the preamble of this Bill, for the purpose of ascertaining what has led to this extraordinary measure. I there read nothing of punishment, nothing of delinquency. I find it is merely alleged that the Bill is necessary. The allegation in the preamble is that “Whereas the “House of General Assembly at a particular time (the inaccuracy of the date has been already adverted to) “having been summoned to meet on a certain “day to constitute and ordain laws, statutes and ordinances for the public welfare and good government “of the island, and having met in pursuance of such “summons, did then resolve that, unless certain conditions should be complied with (to which it is not “expedient that Parliament should accede) they would “abstain from the exercise of any legislative functions,

“ excepting such as might be necessary to preserve in-
 “ violate the faith of the island with the public cre-
 “ ditors : And whereas it has thus become *necessary*,
 “ that temporary provision should be made for making
 “ and constituting laws for the island,” the enact-
 “ ments, to which I have before alluded, are proposed.”

Now, Sir, there is nothing more important to be considered in any legislative measure, than the preamble of a Bill ; there is nothing which the practice of Parliament, and which the necessity of the case, require to be stated with more clearness and more distinctness than the *reason* upon which the Bill is founded. It certainly would be one of the complaints against this measure, that it is not founded on a true statement of the facts ; it alleges that the Assembly of Jamaica, did resolve that “ *unless certain conditions should be complied with,*” they would abstain from the exercise of any legislative function. As far as I have been enabled to look to the facts, that is not an accurate description of the resolutions of the Assembly ; they did not annex any conditions ; the resolutions were read by my learned friend, the agent for Jamaica, yesterday ; they only allege, that, considering the facts which have occurred, (and the principal of those facts was the passing of the Prisons Bill in this country), they did not hold it consistent with their honour, or becoming them, to proceed with their legislative functions, excepting as far as might be necessary to keep faith with the public creditors.

This, Sir, is not a resolution founded upon conditions ; it is not a suspension of their functions altogether ; they hold themselves perfectly ready to provide for all the exigencies of the state, and they annexed to that, as far as I can see, no condition whatever. They went on to declare, that they suspended those functions only until they received Her Majesty’s pleasure with respect to certain matters which they afterwards mentioned ; but I do not conceive that, either in literal meaning, in spirit, or in

substance, is there any declaration on their part that they withhold their legislative functions upon any condition whatever. How, therefore, this House, or the Parliament, can be called upon to pass a Bill upon an alleged necessity, arising out of resolutions which are founded upon conditions, when, in point of fact, there are no conditions at all, I cannot understand. The least I have to say is, that this is inaccurate; it is not precise; it is not distinct; it does not represent fairly before the Legislature the conduct of the Assembly of Jamaica; and, therefore, I attribute it to some haste, or some inadvertence, or some misapprehension of what the Assembly have done. They have done no more than this: they say, "You have created to us a difficulty; you have put in our way a stumbling-block; we cannot proceed unless we give up our independent legislative power; and, feeling ourselves in that situation, taking care always that the public exigencies shall be provided for, we do in other matters of legislation, which are not indispensably necessary, suspend our functions, which have thus been interfered with." That is all. I feel it essentially necessary that the House should be in distinct possession of this part of the case before I proceed to a further consideration of the *necessity* upon which alone this proceeding can be justified. I trust I have sufficiently drawn the attention of the House to this point; so that, looking at the resolutions themselves, it can be clearly ascertained whether the preamble is a correct representation of them;—and I submit with much confidence to the House that it is not.

But, Sir, to pass by that consideration—and, as far as I possibly can, to bring this House to one or two plain points—I will proceed to consider the *necessity* which is alleged. First, there is no necessity with respect to the supplies; there is no necessity with respect to any of the public exigencies; and I will, in one word, put the House in possession of the case of necessity which is said to exist at the present moment.

by this simple statement; hoping in all I say I shall not improperly urge any thing against any individual not present here to defend himself; that I shall not state with respect to any one more than is absolutely necessary to be urged for the purpose of making myself intelligible. I venture merely to say, that it was an error when it was supposed by the officer who at present executes the executive functions in Jamaica, that there were seventeen temporary laws which it was necessary for the good of the island should be continued; because I believe I speak from the best authority upon that subject, recorded in the book which I have here, containing the despatches sent out to the colony, and which have been laid upon the table of this House, when I say,—that there is a despatch from the noble Secretary at the head of the Home Department, correcting that error.—It is not my own correction, therefore, but official:—inasmuch as Lord John Russel states, that instead of there being seventeen laws so circumstanced there was one only (namely, that which related to the *police*) which required immediate attention. This, therefore, cuts down the plea of necessity to that simple point; and one word, Sir, with respect to that. I believe it is the clear and undoubted law and practice of the colony, that the Governor, if he thinks fit, by virtue of his prerogative (and it would be extremely extraordinary if it were not so), can take care for the preservation of the public peace, independently of those considerations of police to which the noble Secretary for the Home Department has referred. *There was therefore, Sir, no pressing necessity.* And I put my case, in the first instance, upon this point. There was no necessity of the kind alleged;—the government of the island could go on precisely in the state in which it was. At all events, when we are speaking of necessity, it must be remembered always that I apply this to that sort of necessity which is to justify the extinction of the constitution of an independent colony. There is in this

case no such necessity to justify such a proceeding ; nor can such necessity exist till the Governor has called the Assembly together, and has propounded to them the immediate execution of any part of their duty essential to the preservation of the country—essential to the supplies—or essential to the carrying on of the government of the island, and that, under such circumstances, they had refused to act. No case of that kind is made out ; the necessity simply reduces itself to the point which I have already mentioned.

There being, therefore, as I conceive, Sir, *no necessity* to warrant this proceeding, I should almost feel that I had done my duty to my clients if I rested where the case now is ; because I am confident that I should have the ready assent of every member of this House, that without a case of overwhelming necessity, you cannot destroy any constitution :—or, above all, interfere with the *popular* portion of a constitution that has existed for the length of time that the constitution of Jamaica has prevailed.

But Sir, I feel that I should be unjust to my clients, and not paying proper respect to the House, if I did not use my best endeavours to bring shortly before them what is the real nature of the difficulty which is said to exist in Jamaica at the present moment—what has led to it—and what is the justification to be found for the Assembly (for that is all that I seek to do).

I ask not where the blame lies ; I impute it to nobody ; it is no part of my advocacy here to endeavour to fasten it upon anybody ; it may be misconduct ; it may be inadvertence ; it may be haste ; it may be any thing they like. I impute it to nobody ; but I stand here to make out before the House a proposition, about which, if I have but the power to communicate to the House the clear conviction that I have in my own mind, I doubt not that I shall make it appear as clear and distinct as any proposition that ever was stated.

The proposition I lay down is this, that under the state of things which existed in Jamaica, let them be caused by whom they may, it was not open to the House of Assembly to have taken any other course but that which they have adopted. That is the position by which I mean either to stand or fall. And I say more, Sir; I beg leave to add, that considering the very embarrassing circumstances which have arisen, as I think by no fault of the Assembly, they had no mode of proceeding but the course which they have pursued. I beg leave to say, that to this moment not one single effort towards conciliation has been made by anybody:—either in the colony or out of the colony—either connected with the Governor or not connected with him—either by the Colonial Secretary or Her Majesty's Government. It is complaint of injury on one side; it is a total absence of conciliation on the other.

Sir, The transactions out of which the unfortunate difficulties in Jamaica have arisen are these: The Acts which have been passed in the Legislature with respect to the abolition of slavery are too recent and too familiar to the House for it to be necessary for me to say one word about them. Certain provisions have been thought requisite in consequence of the emancipation. The Assembly have participated in many of the Acts which became necessary since the abolition of slavery. I do not mean to weary the House with a detail of the circumstances; but I venture to say that the Assembly of Jamaica has at least taken its part in the noble and splendid work of Emancipation. When that Act passed, a power was given to the colonies—a most considerate and wise power—to pass, by the vote of their own legislature, the measures which would be necessary to give effect to the emancipation. Jamaica voluntarily met the emergency; Jamaica put an end to the slavery, and made the slaves free by an Act of its own legislature. It is well known to the House, that a period of ap-

prenticeship was interposed, in order to familiarize the slaves with the freedom which was given to them, and by degrees to bring about that important change in their condition. The period of apprenticeship was to last till the year 1840, which has not yet arrived; an appeal was made (I wish not to introduce one word of acrimony if I can avoid it; whether it was accompanied with more of pressure than should have been, it is not for me to say) but an appeal was made again to the colonies, whether they would shorten that period which the wisdom of the Legislature had defined for the continuance of the state of mitigated slavery. Again Jamaica concurred in aiding emancipation, and the Assembly of Jamaica assented to abbreviating that period, and, upon the representation of the Governor, passed an Act to effect the anticipated termination of apprenticeship.

That Act, Sir, was sent to this country; intelligence of it was received in England on the 16th of July 1838; and on the very day that that Act was received—an Act by which the legislative body in Jamaica had shown its readiness to carry out the wishes of the Imperial Parliament with respect to the emancipation of the slaves—the *Prison Bill* was laid upon the table of the House of Lords by the then Secretary for the Colonies. I hope I do not exceed the line that I have proposed to myself when I say, that this, at least, was felt in Jamaica as an unexpected—an ungenerous—and an unkind return for the compliance which they had shown with the wishes of the Imperial Legislature. Sir, the circumstances of that Bill, to which I shall have occasion to draw the attention of the House, were very peculiar; however, it is at present sufficient to say, that it received the royal assent. It was sent out to Jamaica.

Sir, previous communications from this country with respect to prisons had been received by the Governor, and when received had been communicated to the House of Assembly. The earliest opportunity had been taken of informing them of the despatches

sent from this country from time to time for the management of prisons ; but when this Act went out no notice whatever was taken of it by the Governor when he opened the Assembly ; and the first public intelligence which that body received of the Act of the Imperial Legislature with respect to the prisons in Jamaica, was by its being placarded on the outside of the door of the Assembly, accompanied with the Governor's proclamation, that it was to take effect in the island.

Sir, in cases of this description, there is no mode by which we can so effectually try the real nature of any facts, as by applying them to ourselves : — And therefore again I say, supposing this House was dealt with in that manner, would you or would you not resent such a course of conduct ? It would be done with temperance, no doubt ; I do not see that the course of the Assembly in Jamaica was in that instance intemperate ; but, however, it is sufficient for me to say at the present moment, that the passing of that Bill by the Imperial Legislature, sending it out to Jamaica, and its being promulgated in the manner it was, and withheld from the Assembly, was the cause of those representatives of the people for a time refusing to execute their functions, except as far as was necessary to meet the public exigencies.

I have thus shortly, Sir, stated that which is the real cause of the difficulty, in order that it might be present to the mind of the House at the time when I proceed to illustrate, as far as I can, the proposition I before stated :—*That upon that Bill coming out to Jamaica, the House of Assembly had no other course to take but that which it adopted.*

Now, Sir, it will be necessary for me, in order to deduce my argument clearly and distinctly from the premises which I mean to assume, to see if I cannot establish distinctly two or three plain points, so self-evident that I should think they would almost prove themselves—I have the advantage, Sir, of alluding to what my learned friend urged to this House last night ; and, therefore, I need not fatigue

this audience with going through any of the detail then brought before them ; I shall rather assume the result of what my learned friend so clearly, so luminously, and so very distinctly stated to the House. Sir, the first proposition which I lay down is this, that the *essential constitution of Jamaica*, as established by his Majesty Charles the Second, was of a *popular character*.

In the year 1660, the then Governor, Colonel D'Oyley, was directed by a commission from the Crown, to have, as an aid to him in the government, *a council to be selected by the people*. That is the commencement of the constitution of Jamaica.

Very shortly after that period, commissions were issued directing the Governor also to take to himself *assemblies of the people* ; those assemblies were, in point of fact, summoned ; many of them were called in succession.

At last the Crown thought fit to interfere, and to raise doubts as to the propriety of having an assembly, and to question the powers of those assemblies ; but, after a struggle of three years upon that subject, the point being submitted to the judges of this country, and being carefully and temperately considered in the Council, the attempt of the Crown, under the advice of the Ministers of Charles the Second, to put an end to the assemblies of Jamaica was abandoned ; and the assemblies were directed to be called and summoned again in the order and "*in the manner which had been used and accustomed*." Sir, in all the controversies which have arisen with respect to the legislative assemblies in Jamaica, the constant language used by the Crown has been that the assemblies shall be called and summoned "*in the manner which has been used and accustomed* ;" and I appeal to those expressions emphatically, because, though, I am prepared, if the occasion require it, to go into the consideration of the extent of the prerogative of the Crown on the one hand, and the independent rights

of the colony of Jamaica on the other, yet I do not feel myself called upon to enter upon that question, because I stand here to support that which we every day refer to in this country, and which all our institutions proceed upon, namely, *the usage and practice of the constitution*. I rely, as we rely for our invaluable common law, upon usage, custom and precedent. I say, whatever abstract notions may be entertained by some, I have no difficulty in reconciling prerogative and freedom, dependency and independency. Whatever abstract notions may exist, with respect either to the supremacy of the Crown of this country or the Parliament of this country over the colonies; whether that is to be sought for in the general principles of law, or whether it is to be found in the statutes applicable to this subject, particularly the 6 George III, cap. 12. which says that the colonies shall be dependent upon the mother-country, and shall be subject to the supremacy of the Crown and the Parliament; admitting all that to the fullest extent, I am prepared still to say, that by the express proclamation of the Crown, attempted afterwards to be set aside, but subsequently restored, and *by the usage and practice of the Island of Jamaica, it ever has had and still has an independent legislative power in the Assembly for the purposes of internal regulation*; and that that power never has been infringed upon.

Sir, that power of internal legislation was exercised by the Assembly immediately after it was recognized by the Crown at the close of the reign of Charles II. The Crown did not acquiesce in it: it abstained for a long time from giving assent to the laws which were passed by the Assembly; but finally, in the year 1728, after a long course of dispute between the Crown and the colony of Jamaica, a compromise or an arrangement was made between them, which was embodied in a local Act of the Assembly of Jamaica; and which gave, on the one hand, to the Crown, a permanent revenue, but, on the other hand, secured to the colony its laws

and institutions ; and one of the laws then secured by that Act gave to the Assembly an independent legislative power for the purposes of internal government.

I have already, Sir, alluded to that Act of Parliament which declared the dependence of the colonies. At the time that Act passed—at that very period when the question of the dependence or independence of the colony was fresh in the consideration both of the Crown and the Imperial Parliament of this country—local legislation went on in Jamaica precisely in the same manner as it had done before. A considerable number of Acts, I forget how many, but rather an unusually large number, passed the Assembly of Jamaica in the very year in which that Act declaring the dependence of the colony upon the mother-country was passed : and I say, therefore, that if there is any one right which has been established by the express declaration of the Sovereign—which is founded in practice and usage—and which has been confirmed by Parliament—it is that *right of the colony of Jamaica to have an independent legislature for the purposes of internal government.*

Nor, Sir, does the matter rest there ; because the House was informed by my learned friend last night—and it would otherwise be in their recollection—that a subsequent statute of the 18th of George III. which expressly prohibits the Imperial Parliament from taxing the colonies presupposes a power of internal taxation to exist in the Assembly, because otherwise the government of the country could not be carried on.

There is, therefore, no sanction, Sir, which the laws of man can have which is not accumulated, as it were, in this case, for the purpose of proving the internal legislative power of the colony of Jamaica. That is one point upon which I rest ; and I beg leave to say, that I do not believe that the ingenuity of man can devise reasons for shaking that proposition, and I shall, therefore, assume it as indisputable that

the colony of Jamaica ever has had, since it was established, and ever has exercised against the power of the Crown, and against the interference of Parliament, the power of taxing itself, and making laws for its own internal government.

I advance one step further, Sir ; I say, suppose it was questionable ; suppose there was any doubt about it ; suppose any body should suggest, " Why you are " in error ; internal legislation is an extensive term ; " you must define to what it is applied," I should in answer apply myself solely to the present argument ; for I wish, in the language of the lawyers, to keep myself within the record ; I say no person alive can doubt that the providing and maintaining prisons, and the regulation of prisons, is a fit subject for internal legislation ; and cannot, either in wisdom, or in policy, or in any view that can be possibly taken of it, become a proper or legitimate or convenient subject for legislative enactments for the mother-country, in which the people of the island are not represented.

Now, Sir, besides that proposition, which I feel confident cannot be shaken in any degree, I have the fact to speak for itself :—because I have a long succession of statutes from time to time passed by the Legislative Assembly of Jamaica with respect to prisons, Acts which have become law in the island, and that with the sanction of the Crown. Because Acts passed by the Legislative Assembly of Jamaica are not binding unless they receive the sanction of the representative of the Crown (the Governor), who is one of the consenting parties to them. And if the Acts assented to by him, the council and the Assembly are not subsequently disallowed by the Crown, upon their being communicated to the mother-country, they are effectual and binding. There is, therefore, the acquiescence of the Governor for the time being, and of the Crown itself, to those Acts to which I have before alluded, regulating prisons, and providing funds for

their erection, and, in point of fact, dealing altogether with prisons and prison discipline as a matter within their power, cognizance, and direction.

I think I have before alluded to the Acts which have been passed by the Assembly of the colony. The largest number in any one reign was in that of Charles the Second; and at the other period, just after the Act asserting the dependence of the colonies, there were also a great number passed; and applying this observation especially to prisons, I find that there are Acts passed in the reign of Charles the Second; one in the reign of George the Second; three in the reign of George the Third; subsequently one in the reign of George the Fourth; and three in the reign of William the Fourth. I have, therefore, in respect to this matter, no difficulty whatever. It is, by the consent of the Crown, a matter of internal regulation; and it is conceded that the prisons should be under the laws made by the Assembly.

Now, Sir, that being the case, I feel that with respect to the Prisons Bill, which was passed in the year 1838—the last year—I have nothing more now to do than to say, that that Act was, as far as Jamaica is concerned, *an interference with the acknowledged right and practice of the island to have those matters under its own control*. That is a sufficient answer to any case that can possibly be set up.

But I will not content myself without considering the case in the most disadvantageous point of view for the island. Supposing it should be said, that, in consequence of emancipation, new laws, new regulations, new prisons, became necessary; and that the Legislative Assembly ought to have considered those circumstances. The answer, Sir, that I have to that supposition is, that there never was a message sent down by the Governor to the House of Assembly in Jamaica with reference to prisons, to which the Assembly did not instantly give their most serious and mature consideration: and again and again they have

had the thanks of the successive Governors for having discharged their functions in that respect with promptitude and zeal. In the year 1829, when Lord Belmore was Governor, a message of that kind was sent down by that noble individual; and it was immediately acted upon; and the Act of the 11th of George IV. for the regulating of gaols and prisons, was passed immediately by the Assembly. After that time, Lord Normanby, and Lord Sligo, each in succession, at different periods, sent down to the Assembly messages upon this subject, which were all complied with. My learned friend, last night, stated to the House the occasions—the nature of the messages—and the manner in which the compliance was effected. It cannot be truly urged to this House that at any time whatever was the Assembly of Jamaica either lukewarm or negligent, or holding back in any degree, in making such provision for the regulation of prisons as was thought necessary.

Sir, in the year 1834 there were three Acts passed with respect to the prisons in Jamaica. It was thought at that time that it was necessary that particular measures should be taken with respect to the prisons; and a message to that effect was carried down to the Legislative Assembly. They thereupon passed three successive Acts; the first establishing most minutely, (as appears upon the face of the Act,) regulations for the gaols, as excellent, I believe, as could be made; as good in every respect as the regulations which exist in this country. And the Act required that they should be stuck up in the different gaols, in order that they might be known to all the prisoners. I imagine a better system of gaol discipline with respect to the classification of prisoners, and every other matter which required attention, could not be made than that which was contained in the Colonial Act of 1834. The Governor stated in his message to the Assembly, that “this Act was the most important of the session;” but

it required fresh prisons to be erected, and he feared there had been negligence in the parishes in carrying it into effect. Some observation was made in answer to that; the pressure of the times and the difficulties of the island at the moment, had probably led to that delay; but that care would be taken to provide for it. In the same year an Act was passed to raise funds for the building of gaols; and no less a sum than £. 42,000 was raised under that Act, for the purpose of improving the prisons then existing, and affording funds to build new ones where they were necessary. Nay, they did not stop there: for when (as we all know too often occurs in Acts passed in our Legislature here) some further correction was necessary, an Act was passed in aid of the former, and to give full effect to its provisions. I say, therefore, that there never was a legislative body who attended more to the intimations of the executive than the Legislative Assembly of Jamaica. There never was a body giving more practical proofs of their willingness to carry the wishes of the executive into effect.

After this Act was passed, further communications came from the Governor, intimating that preparation must be made for the change which was soon to take place. Answers the most courteous were returned from the Assembly, stating that they were proceeding to make that preparation. A gentleman of colour, one of the most intelligent and most active members of the Assembly, took the subject up:—formed one of the committees which were from time to time appointed by the vote of the House of Assembly—attended to the matter himself—prepared a Bill upon the subject—and was proceeding to carry that Bill into effect, and to do every thing which the change of circumstances might render necessary for the general regulations of the prisons. He was doing this up to the very moment when a commission was sent out from this country for the purpose of inquiring into the state of the prisons in Jamaica; and that commission, I am sorry to

say, had been occasioned by observations which had been unjustly made with respect to the conduct, the management, and the regulation, of the gaols in Jamaica. I hope I shall drop no expression which can be construed as treating lightly any feelings of humanity towards those who, for any purpose, are put under confinement; but there was a great deal of very warm discussion in this country as to the enormities which were said to be committed in the prisons in Jamaica; and perhaps it was an act of kindness on the part of the Government to send out a commission for the purpose of investigating that matter. A commissioner went out; he arrived in the colony in December 1837; I believe he was in the island during December 1837 and January 1838; he went to all the prisons; he made a report; that report was sent to this country. Now, at that very time, when the commissioner having been to the colony—having investigated the subject—having come back to this country—and having, in the ordinary course, made a report—and when, in Jamaica, they were expecting that that report would be sent out to them, or communicated to them; at that very time also, the noble Secretary for the Colonies had sent a despatch out to Jamaica, which the Governor had communicated to the Assembly, drawing the attention of the Governor to the circumstance, that in the year 1840 the apprenticeship would be at an end;—and that despatch closed with the intimation that, “in 1840, if not before, they must make some regulation with respect to the prisons:”—the Governor had also stated that *returns had been called for* from the parishes with respect to the prisons, and that those returns would be laid before the Assembly:—Sir, in that state of things, when the colony were looking for further information from the mother-country—when they were waiting for the report from the Commissioner who had been sent to investigate their gaols—and when the individual to whom I have alluded was making pro-

visions for the Prison Bill,—it is at that moment—at the moment when they have aided the total emancipation of the slaves, by doing away with the apprenticeship, that this Bill was brought into the House of Lords by the noble Secretary for the Colonies. Now, Sir, if I have established the points for which I have before contended, that *the Assembly have by law the right of regulating their internal government—and that prison discipline and prison management are a part of that internal government*, I do say, and I cannot be driven from the position, that the Prison Act passed in this country was an interference with their most indisputable and most sacred rights.

Besides, Sir, there was no necessity for that Act ; as far at least as Jamaica was concerned ;—for the Assembly of that island was doing all that could possibly be required of them to do ;—they were proceeding with the subject ;—they were ready to do all that was necessary to effect the wishes of the Government. In that point of view, therefore, the Act was altogether unnecessary.

And now the House will, I am sure, indulge me for a few moments, whilst I describe the real character of that Bill. I have alluded to the report of Captain Pringle, which was expected in Jamaica. That report was laid upon the table of the House of Lords ; it lies now upon the table of this House. Every body would, of course, conceive that the elaborate report of the commissioner would, upon the face of it, show an overwhelming necessity for the Imperial Parliament to interpose on that particular occasion in a manner so contrary to its former practice ;—for such a thing was never done before with respect to the Island of Jamaica.—It would, therefore, be supposed that there was something that made it imperatively necessary for the mother-country to interfere. Sir, it was totally unnecessary with respect to Jamaica, for the reason I have mentioned. The report, so far from showing any necessity, affords, in a great measure, as

has been properly observed, an answer to the unjust imputations which had been cast upon the colony, of severity to prisoners :—it negated, in a great degree, those charges ; and showed what is most important, namely, that the greatest portion of the abuses which had existed had been corrected. For if any individual Member will take the trouble of reading that report, he will see frequent allusion to what had existed before ;—what Captain Pringle had been led to believe, he should find. But the Commissioner states in his report “ it was so before ; ” “ it is not so now—the “ magistrates have interposed—matters have been corrected—many things which were wrong have been “ put right”—and I venture to say, that the report, so far from giving a justification for hasty interference ; gives a decisive answer to the imputations which had been made ; and takes away every excuse for passing the Prison Bill, as far as Jamaica was concerned.

Now, Sir, it was with a knowledge of that report—it was at the time it was laid upon the table of the House of Lords—on the same day—that the Prison Bill was introduced into that House. It was read for the first time on the 16th of July. There was not one single day allowed to pass upon which that House met that the Bill did not pass some stage :—Every sitting was taken advantage of :—And no unopposed turnpike Bill ever went through the House with more rapidity than that Bill, which was in fact an infringement of the rights of the Assembly of Jamaica. As far as any public means of knowledge can be obtained, there is not the slightest trace of any discussion upon its merits in the House of Lords :—or even as to the introduction of the measure. Nothing was said or any explanation given by the Colonial Secretary to apologize for so great an innovation, (which it undoubtedly was), nor for so novel a precedent. I believe, with the exception of a collateral inquiry made by a noble Earl (but which had nothing to do with the merits of the question ;) there was nothing said—nor was there the slightest allusion to its being an

interference with the legislative functions of the Colonial House of Assembly. The Bill passed through the House of Lords as the most ordinary measure would do. It came down to this House. And here precisely the same haste occurred again. No day of the sitting of the House passed without that Bill proceeding a stage; so much so that, although there were formal amendments made in this House which were carried up to the House of Lords, and, requiring the assent of that House, occasioned some delay, yet finally the Bill passed, and received the Royal Assent on the 4th of August; having made its progress through Parliament without the slightest notice being taken of it. It was brought in on the 16th of July, passed through both Houses, and received the Royal Assent on the 4th of August.

Sir, I think I have heard it whispered that that Bill did not pass through without observation; I beg leave at once to take issue upon that fact. I say that it did pass through without material observation—nothing but the incidental collateral comment of the noble Lord, to which I have before alluded, having taken place; and in the whole course of parliamentary legislation, I will venture to say, that there never was a measure effected with less canvassing—less observation—less explanation by any of those whose duty it was to represent to the House the nature of the proceeding, and to put Parliament upon its guard, than this Prison Bill, which was thus to interfere with the legislative independence of the colonies.

I am sure, Sir, if I were to press the House with further argument, I could not represent the case to them more strongly than these facts declare it. But I will go a little further and say, (I hope not disrespectfully,) that of all the *impotent Acts* that were ever passed by the legislature, there never was one more impotent—or insignificant—more uncalled for—less operative, than the Prison Bill which was so passed, and which so affected the colonies.

I have the Bill in my hand. I do not make these observations lightly or inconsiderately. What does the Bill provide? One would imagine before the internal legislature of Jamaica, or any other colony, was to be affected, something important, and which was to be followed by material and imposing consequences, would form a justification for the step. According to my judgment, looking to the Act itself, nothing can be more unimportant—nothing less material or imposing in its consequences.

But I will distinctly draw the attention of the House to what has been effected under its provisions: and then the House will see whether this Bill affords any justification for its passing. Heaven forbid that I should attribute motives to any man; I cannot know what the hidden motives may be. But I do protest that it is not possible for any human being to trace any motives of expediency for passing such a Bill as this. It first recites, "Whereas it is expedient to make further provision for regulating prisons in Her Majesty's colonies in the West Indies, and for the superintendence and care of prisoners confined therein, and for the due discharge of their duties by the keepers and officers of such prisons." It then enacts, "That it shall be lawful for Her Majesty, with the advice of Her Privy Council, or, with respect to the prisons of each colony, for the *Governor and Council* of such colony, to make rules for the government of the prisons in Her Majesty's colonies in the West Indies, and for the care and superintendence of the prisoners, and for the duties of the keepers and officers of such prisons, and also to amend or annul any such rules in force at the time of the proclamation of this Act, or which shall be made after such proclamation; and all such rules so made or amended shall be binding on all persons within such colony." Her Majesty also, may amend or annul any rules; or may make rules.

This is the important matter which is to be effected under this hasty Act, sent out to the colonies in so insulting a manner ;—that Her Majesty, or the representatives of Her Majesty, might make rules for the government of the prisons, and for the care and the superintendence of the prisoners. What a mighty matter upon which to interfere with the internal regulation of the colony ! But what was the sequel ?

This Bill had passed through the Houses in the manner I have mentioned, with the greatest expedition ! One would expect that there was at least corresponding expedition in carrying it into effect. On the 13th of August the Colonial Secretary sent it out to Jamaica. It arrived there on the 25th of September. Well, surely this impromptu Act, this forced birth of the legislature, must, immediately it arrived in the island, have been acted upon with the utmost promptitude. It was not till the 29th of November that the Governor exercised the powers given him by this important Act. On the 29th of November, the imposing powers ceded to the Governor of the colony—the representative of Her Majesty—the instrument of the executive—were carried into execution ; and the acts so essential for the benefit of the colony were announced to the happy island. Yes, on the 29th of November were promulgated, under the approval of Her Majesty's representative, a body of rules for the regulation of prisons,—extremely important, no doubt,—but *they were copied almost verbatim from the colonial Act, which I have before described to this House as passed by the Legislative Assembly of Jamaica in the year 1834.*

Such, Sir, was the haste—such were the means adopted in this country—for sending to the colony a Bill to produce such a diminutive effect.

Now, was it possible for any lawfully-constituted body,—for a body of representatives,—for the guardians of the rights of the people,—to look without extreme jealousy at a measure of this kind,—sent out to this island in so unprecedented—so unusual a manner,—interfering with their ordinary usages, customs

and practice,—and practically encroaching on their constitution ; and all for what ?—to produce so absurd, so ridiculous a result.

Sir, What are the other provisions of this Act ? The Governor has power given to him to appoint inspectors of prisons. This again was a matter totally unnecessary. The Governor had before, in himself, the power of appointing inspectors in this manner. There are, in Jamaica, local magistrates ; magistrates residing in different districts, much in the same manner as the magistrates in this country. There have also of late years been introduced special stipendiary magistrates ; and they are more immediately under the nomination of the Governor. They are supposed to be a body in some degree either restraining the conduct, or correcting the errors of the local magistrates, who, it was unjustly surmised, might not be so impartial in their conduct or well-informed in their duty. The Governor has the power of making those special magistrates local magistrates, and those local magistrates have the power of inspecting prisons. Nothing, therefore, could be more uncalled for than the section to which I have last alluded ; which gives, as if for the first time, to the Governor, the power of appointing inspectors of prisons, a power which he had possessed and exercised before. By the next section, the Governor may visit, or authorize any person to visit, prisons ; a penalty is imposed for obstructing inspectors or any authorized persons. The Governor may suspend or dismiss officers. Periodical returns are to be made, and plans of prisons are to be sent to the Governor ; and then there is a section to inform the people of the colonies of the meaning of the words “ prison ” and “ prisoner.”

These are all the provisions of the Bill, with the exception of one, which I have purposely passed over, and to the real effect of which, I will draw the attention of the House. But first I beg to ask, Is this a Bill to meet a sudden emergency ? a Bill to suit the peculiar circumstances of the colonies

in their new condition? No such thing, Sir. It is nothing but a few clauses selected out of a former Bill for the regulation of prisons in the country; those clauses being rejected which were totally inapplicable to Jamaica and the other colonies; and those clauses only retained which were of such a general character and scope, that it was thought perhaps that they could do no great harm. But there was not the slightest pretence for supposing that they could in any respect be applicable to the varying constitutions of the different colonies. My learned friend Mr. Burge, pressed this subject too forcibly upon the attention of the House for me to attempt to enter upon it. What is the advantage of uniformity in the management of prisons in the different colonies, even if that uniformity was established? Where is there any advantage to be derived to any of the colonies—or to any of the different classes there, of whatever colour, from the very insignificant clauses, to which I have alluded?

Then, Sir, there is a clause, which I beg leave to say is in the direct teeth of the Act of Parliament passed for securing the colonies from taxation by the mother-country; for, either the clause in question would be totally inoperative, or it would have the effect, that no persons could be confined in the gaol, which the Governor might certify to be unfit, and so operate as a general gaol-delivery—or it would impose upon the colony the necessity of raising funds to build new gaols. The Governor has by the Act the power of certifying that a prison is unfit. Suppose the Governor were to exercise that power. If this section has any real or substantial meaning, it must be this: “You, the people of Jamaica are liable to build prisons, and we will give the Governor the power of certifying that the present prisons are unfit, and you will then have to build new ones.” Then, Sir, what is the effect of that? Does any body mean to deny, in the face of the statute of the 18th of George III., that the sole right of internal taxation

belongs to the colony alone? But this clause in the Act which the Imperial Parliament has sent out to Jamaica will be totally inoperative, unless the local legislature there exercises the power of voting the money necessary for building other prisons when those existing are declared by the Governor to be unfit. This Act, therefore, shows that the parties who framed it knew there was an independent power of taxation in the colonies:—they knew more:—they were well aware that they were sending out a piece of waste paper, unless the Colonial Assembly would act upon it, and find the funds to build those new prisons which the Governor's certificate might make necessary. I say, therefore, that the act was inoperative for the purposes intended. If the Act was passed for the purpose of regulating the prisons in Jamaica,—it neither afforded nor produced the rules necessary for their government:—Nor, if its object was to build new prisons, the means to carry that object into effect;—for they could not be raised unless the Governor resorted to the colonial legislature for the purpose.

Now, Sir, I have endeavoured to draw the attention of this House to this point, that not only was the Prison Act in direct contravention of the independent power of the legislature in Jamaica, but also that it was altogether inoperative in its effect.

Was such an Act likely to be adopted by the Legislative Assembly in Jamaica? I would ask the House, supposing Her Majesty was to be advised by Her Ministers, that a message should be sent to the Lords to pass a Money Bill, and that such a Bill was sent down to this House, would you tolerate it for a moment? Has this House ever tolerated proceedings of that description? Might not innumerable instances be accumulated in which this House, with a just jealousy—a just regard to its own privileges—has again and again, though to the cost and inconvenience of parties, to the inconvenience even of the public, thrown out Bills sent down from the Upper House with perhaps trifling alterations in them, but which might have

the effect indirectly of interfering by precedent with the privileges of this House? Have not those privileges always been guarded by this House with the greatest vigilance? Sir, it is fortunate for me that I can quote an instance upon the very subject to which I have alluded, viz., the building of prisons, and in which the Bill would have had an indirect effect, very similar to the clause in the Prison Bill to which I have alluded, enabling the Governor to say, that certain prisons were unfit to receive prisoners, and therefore no prisoners should be sent there—that would have the indirect effect of making the Colonial Assembly raise money to build other prisons.

Now I find in Mr. Hatsell's Precedents * this instance: "On the 4th of May 1737, a Bill from the Lords was read a first time, and it appearing that there were provisions in the Bill for declaring a new gaol or prison" (it was simply declaratory) "lately built at Horsham, in Sussex, to be the common gaol for that county, and that the said gaol should be kept in repair by the same means by which other county gaols are repaired. Those provisions were so directly against the rule, 'That the Lords should not impose any rates or taxes upon the people,' that upon the Speaker stating them to the House, it was unanimously agreed to lay the Bill aside, and to give leave to present a new Bill for these purposes." It is almost identically the same state of things as was produced in Jamaica by the Prison Bill. In the case quoted, the House of Lords only passed a Bill directing that a particular gaol should be a county gaol, and left the burden to fall upon those to whom it attached by the common law,—casting it therefore indirectly upon the county. This House rejected that Bill immediately, and would

* 3 Hatsell's Precedents, p. 130; 2d Edition. "Supply," "Lords interfere."

not allow it to proceed:—in doing which the English House of Commons did only that which the House of Assembly of Jamaica have done. Because Honourable Members will do me the favour for one moment to consider, that when this Bill was sent out to Jamaica there had been no unsuccessful appeal to the Assembly. The Imperial Parliament, without such appeal—in defiance of the Act directing that the colonies should not be taxed but by themselves—had directly taxed them: and when it was apparent that the Act was inconsistent with the right of internal legislation they had so long enjoyed, what had the Assembly to do but to say, “You have committed a breach of our privileges, and, having done so, we stay all our proceedings, except so far as may be necessary to meet the public exigencies.” I know of no other conduct that they could have pursued; and I venture to say, that if this House was put into that situation, and had no other remedy, it would go further; it would stop the supplies. I have no doubt that every Honourable Member will feel that such would be the course of proceeding for this House.

Now, Sir, having put the conduct of the House of Assembly upon its proper footing:—showing that it had a clear right of internal legislation—and that that right was needlessly and wantonly interfered with (for there was no object in the Prison Bill to justify it)—that being the real state of the case, I ask, was it to be expected that the Assembly would act otherwise than they did?

I beg leave to remind the House of the constitutional course which was taken when this measure was discussed in Jamaica. It is not the fact, as stated in the preamble of this Bill, that it was on the 18th of December that the resolutions to which I have alluded were passed—it was at an earlier period. The real history of the transaction was this:—Early in November, the Prison Act having been promulgated in Jamaica by the Governor, the

House of Assembly resented the encroachment on its privileges. The Governor made a speech to the House of Assembly; that House answered the Governor in those resolutions which have been quoted, and in an address, embodying the same matters. The Governor, on the very same day, prorogued the Assembly, as he said, to give them time for further consideration. The prorogation was to the next day. The first interruption, therefore, of the proceedings of the legislature, was the act of the Governor; he stopped them from doing any thing more on that day. On the 4th of November, the next day, the House of Assembly continued of the same opinion as they were the day before. No circumstances of exasperation of any kind occurred; they simply adhered to their resolutions. The Governor took the proper and constitutional course; he wrote a despatch, saying that the House of Assembly, having taken that course, he should make the legitimate *appeal to the people*; and he accordingly appealed to the constituency upon the subject, by dissolving the Assembly.

I have already said that I do not wish to introduce into this discussion any thing which may have a tendency to exasperate;—however, I cannot but think that it was an unfortunate expression, to say the least of it, for the Governor to adopt, when in his despatch to the Colonial Secretary, he said, he had dissolved the Assembly, in hopes that “he should get *another Assembly composed of more enlightened members.*” If any circumstance should lead to the dissolution of this House, I think members would not feel it very agreeable for the Crown to avow that the reason of dissolving it was, that the Sovereign for the time being, thought that a new House might be assembled of more “enlightened” members. At least it was not courteous, and it is not to be expected that when language of this description is used; as to any body of men, and most of all as to a body of men, founding their claim to respect upon the votes of their fellow subjects, and representing them in Parliament,—

it is not, I say, to be expected that they would receive that sort of intimation with other than very strong feelings. Nor do I, at this moment, think that I should err in the slightest degree before this House, if I were to use terms of the utmost indignation with respect to conduct of this kind, towards the representatives of the people. I should look in vain for any Honourable Member of this House, from whom I could expect censure if I should take such a course. But I feel a restraint put upon me, by the intimation of my clients, who wish that I should argue the case upon its real grounds, and with that moderation and temper which forbid my making such observations as otherwise the feeling of the moment might dictate. The Governor dissolved the Assembly. In that Assembly the majority by which the resolutions were carried was very great,—there was only a minority of five,—those five, with the others, went to their constituents, and four out of their number were not returned again to the Assembly. Now, I beg leave to say, that if the voice of the people, given by their representatives in Parliament, was ever fairly, deliberately and distinctly uttered, it was by the conduct of that new Assembly. The voters of Jamaica, who had exercised their franchise under the sanction of the law and the proclamation of the King for centuries,—those voters so constituted were appealed to by the executive power of the island. “Your Assembly has done so and so; we send them back to you, that we, the executive, may be informed what is your opinion of their conduct.” The people gave the required answer. They rejected those men who had hesitated in adopting the resolutions which vindicated the rights of the representatives of the people. They sent back those who firmly but temperately informed the Governor that “*they adhered to the resolutions of the former Assembly.*”

Sir, I beg leave to ask, in this conflict of feeling between the governor and the governed, whether you can find, in the history of mankind, a more temperate, a more firm, a more becoming course of conduct

than that which was adopted by the House of Assembly. Whatever restraint I have put on myself in addressing this House on behalf of my clients, nothing shall restrain me from giving to the conduct of that Assembly the feeble support of my approbation. If there is any meaning in the often-repeated assertion that those who have an interest in a country should vote with respect to the laws which are to govern it—if there is any thing substantial in the often-boasted privilege of the elective franchise—and these matters are not merely empty bubbles, without substance or reality—surely when the executive power sends back the representatives of the people to their constituents, and asks for their deliberate opinion, after time for consideration, with regard to the conduct of their Members—and when those who are again returned with increased numbers adhere to the opinion which they had before expressed firmly but temperately—not a single expression escaping from them of which any human being can complain—I say such representatives of the people hold up an example fit for the imitation of mankind. Then indeed the elective franchise becomes more than a mere bubble—more than a mere subject for idle talk; and such conduct by the elected must ever receive the willing applause of all men of whatever party, or opinion, or sect, they may chance to be. Above all, I will ask at least for the approval of a British House of Commons! In this place such conduct cannot be complained of; here it cannot fail to be duly estimated; and when, therefore, I feel that I am standing here merely to advocate the cause of the Assembly of Jamaica against a most violent, arbitrary, and unjust attack—not to ask for applause and approbation for them—but to beg you to ward off from their country this attempt to destroy their body—to suspend their laws—to annihilate their constitution—and to give to the island a new code of laws and a new government, such as it never dreamed of or imagined before—I stand upon such sure

grounds of justice and truth, that I feel confident I never can be shaken from them ; and do implore this House to pause before it assents to the passing of this Bill.

As far as I may be allowed to refer to such things, I understand that the second reading has been in a certain degree formal ; and that the discussion of the merits of this Bill is to take place at another stage. If that had not been the case, I should have trembled even for the fate of the country in which such a Bill should have been allowed to rest for a moment in one of the Houses of Parliament. I should have had greater satisfaction if, when the attempt was made to bring in such a Bill, the House had opposed it at the threshold, and not have permitted it to come within its walls.

Sir, I am fearful that I have trespassed already too much upon the attention of the House. There are other collateral matters which I feel, in the full discharge of my duty, I ought to mention ; but at the same time, considering the kind indulgence and attention of the House last night ; and the patience with which this case has been heard at your Bar, I feel that I shall exercise a sound discretion if I abstain from urging other topics of minor importance.

I have endeavoured to found my argument upon three propositions,—*First*, that there is no present pressing necessity, as alleged in the preamble, for the interference of Parliament in this manner. *Next*, that the power of internal legislation has always been established and exercised in Jamaica, as long as it has been under the British dominion. *Thirdly*, that as an undisputed portion of internal government, the regulation of prisons has undoubtedly ever been treated by the Assembly and acknowledged by the Crown as within the power of that body ; nay more, that it has necessarily been so, because they alone can raise the funds for the support of the prisons. I have further shown, that with respect to legislating for prisons there was no default whatever in the Assembly

of Jamaica, but that it has always been ready and willing to make provision upon that matter, and did in fact legislate, and raised money to carry the legislative enactment into effect. There was, therefore, nothing existing in Jamaica at the time when this Prison Bill passed through the Houses of Parliament, which in the slightest degree justified such an interference with their rights, customs and usages. I have shown that the conduct of the House of Assembly, upon this Act being promulgated to them, was just that which this House under similar circumstances, would have adopted, and that no other course was left for them to pursue.

And now, Sir, again I venture with all humility to draw the attention of the House to that reluctance which was expressed when the Bill now under consideration was brought into it ; and I beg leave to call upon every member to consider whether he will inflict such an injury without cause ! (without cause ! I beg leave emphatically to repeat !) upon the rich, the beautiful, the productive, the free colony of Jamaica.

And Sir, before I leave this Bar, I feel I shall not thoroughly discharge my duty to my clients if I do not endeavour to do that which would also personally give me the greatest possible gratification,—make the first step towards conciliation. I have already observed that from the time this difficulty first arose in Jamaica to the present moment, not one single Act has been done by way of an attempt towards conciliation. I know I may be met by saying that the thing is impracticable. I beg leave to doubt that assertion. Because precedent was shown to the House last night in which a very small portion of conciliation had the desired effect, and the difficulty was overcome—or rather obviated—for nothing is so operative in its way as conciliation ; and unfortunately we know that the other view of the subject is also equally true, that nothing is so likely to produce mischief as small bickerings, beginning in little things, but ending in conse-

quences even as formidable as putting the existing constitution of a country in peril.

Sir, I allude particularly to what took place in Barbadoes with respect to this very Prison Act. It was sent out to Barbadoes. Its inoperative nature I have shown as to Jamaica; I imagine if time allowed I might do the same as to Barbadoes. The Governor of that island thought fit to send a conciliatory message to the House of Assembly accompanying the Act. The House of Assembly, acting in the same spirit as the Governor, took all in good part—the only mode by which these difficulties can be avoided—and they passed similar provisions as if they were their own:—and thus by their own act and by their own means, saving themselves both as to principle and precedent, and protecting their own rights and privileges, at the same time that there was an apparent acquiescence in that which the Government desired. That happy result, Sir, was produced because the matter commenced in a conciliatory spirit. I wish with all my heart I could at this moment lay a peace-offering upon the altar of conciliation for the purpose of putting an end to this present apparent difficulty. There is not an Honourable Member who hears the suggestion who would not be too happy to see it carried into execution—unfortunately I am not in a position to pledge myself to any thing, but I may be allowed to sketch out a course of proceeding. And I appear here to represent individuals who, while this matter is pending, have on two occasions exhibited the strongest feelings of conciliation; for I find many of those who instruct me have at a public meeting said, “That they felt confident that there was no dis-
“ position on the part of the House of Assembly or
“ the inhabitants of Jamaica to exercise any act of
“ oppression towards the emancipated negroes. That
“ no distinction on account of colour is now known
“ in the island, and they are persuaded that the legis-
“ lature of Jamaica consider all the inhabitants of
“ that island as equals in point of freedom, and that

“ they never will attempt to adopt any means which
 “ might create a distinction among them. That they
 “ see no reason to doubt that the House of Assembly
 “ of Jamaica, relieved from all the difficulties and
 “ anomalies necessarily incident to legislation during
 “ the state of slavery and apprenticeship, will, if the
 “ Prison Act, which has been promulgated in so un-
 “ precedented a manner, were suspended, proceed to
 “ legislate upon the principle, that all the people of
 “ Jamaica are free inhabitants of a free country and
 “ entitled to enjoy every benefit afforded by the British
 “ constitution.” Such is the tone and language
 adopted by the individuals whom I now represent, at
 a recent meeting held since this measure has been in
 contemplation, and I believe since it has been in Par-
 liament.

Now, Sir, following up the spirit of what they have
 here said, is there no possibility of some conciliatory
 course being adopted? There is an allusion to a sus-
 pension of the Prison Bill. I do not mean to overlook
 any difficulties which may attend that measure. The
 Prison Act of the Imperial Parliament is one which
 applies to all the colonies. I fear, therefore, to suspend
 it with respect to any one colony, might involve a
 difficulty. I am not instructed distinctly on this point,
 nor do I think that I can speak on it as with authority;
 but I do not conceive that there is any wish to ask for
 any thing which is unreasonable, or which might be
 revolting to the House. Not that I should have any
 hesitation in pressing upon the House the repeal of
 the Prison Act, if I thought such a course absolutely
 necessary; for, if the Imperial Parliament had done
 an act of injustice towards one of the colonies, and if
 I was put in such a situation that there was no mode
 of getting rid of the difficulty but by the English
 Legislature, in a bold and manly manner, meeting the
 exigency, and rescinding their own act, I should, with-
 out hesitation, press such a course upon them, and I
 should expect to be answered, in language becoming

this House, " We did in haste—we did by surprise—we did by inadvertence—pass an Act which we find has given you just cause of complaint ; and we will undo what has been unjustly done." Would any individual member in his own case hesitate to take such a step ? Will the Legislature act under a less high sense of honour than any individual member in his individual capacity ? It is impossible.

If, therefore, I have made out my ground, that this was a direct interference with the legislative power of Jamaica, I say it is an unjust act, and, if an unjust act, the English Parliament will undo it. I state that distinctly, because I feel confident I have a right to ask it from Parliament, and I do not expect that my claim would be denied.

But, Sir, it is not necessary to go that length. I do not represent the Assembly of Jamaica ; but I have read that which justifies me in saying, that I do not think feelings of any hostile or extravagant kind would in any degree pervade the Assembly, if it were made plain and palpable to them that a practical inconvenience would result to Her Majesty's Government by suspending, in their particular instance, an Act which extends to all the colonies. I do, from what I have just read, express a hope that my clients would be at least the first to press upon them some abstinence which should render such a course unnecessary.* I could, therefore, easily figure to myself, in my own mind, that if those who preside over the colonial department in this country do think it expedient (and I trust, in all I have said, I have not cast censure upon any one ; I do not mean that censure should be cast upon any one, nor do I mean to suggest that censure should be implied in

* It is believed, that, saving principle and precedent, they would be disposed to act up to the full spirit of their loyal and confiding motto, which may also afford a hint to the mother-country :

" Hos foveat, hos curat, servatque Britannia mater."

any thing that is done) ; but if those who preside over the colonial department could find it within the scope of their duty to recommend to the Governor that some appearance of conciliation towards the Assembly should be demonstrated on his part, where is the difficulty of the House of Assembly in Jamaica doing that which the House of Assembly in Barbadoes has done ? Why may not the House of Assembly pass this very Act, or pass a Bill of themselves to carry into effect still more substantially the objects of that Act, and secure also the means of having it carried into execution ?

Sir, if there is the possibility of such a result from such a course, is it not most advisable that at this moment with respect to the Bill now before the House, some pause should be allowed in order that this matter should not be pressed on, before the Governor has had an opportunity of taking one single step towards conciliation—before the Assembly has had an opportunity of meeting again to consider whether they are imperatively called upon still to persevere in the course they have taken—or whether they can chalk out for themselves some mode of conciliation which might induce the Governor somewhat to relent. It is impossible, Sir, that this Bill can pass in the present state of things, without an opportunity being afforded for conciliation on the one side and the other ; and to that one point I beg leave to bring the close of my address Sir, on behalf of my clients, who are eager and anxious for the prosperity of Jamaica ; all their earliest affections having been formed there—all their earliest attachments taking root from that place—and their warmest associations reverting to it ; they themselves having participated in the government of the island ;—knowing the feelings of the people—having the essential ties, both of personal feeling and personal interest to connect them with the island—and therefore most alive to its welfare :—not deficient, nevertheless, I trust, in that patriotism which would make them, if

it were necessary, overlook their private interests and part with every feeling of a private nature for the general public good, they do from this Bar earnestly implore the House that they will not take so desperate a course as to destroy the ancient constitution of that island, without a crime imputed, a default established, or a necessity proved :—but that at least some effort will be made to stop this violent proceeding, and, if possible, to prevent those dangerous animosities which a course of this kind is too likely, if they do not exist, to generate; if they do exist, to exasperate.

Sir, I am happy to say, that from all the communication I have had with those individuals who instruct me, this language which I have read from the resolutions of their meeting, is not the language of misrepresentation, nor is it wanting in substantial proof. That proof is, that at this moment in Jamaica the effect of emancipation is all that I believe the most sanguine ever anticipated, or the most devoted admirer of emancipation could wish. There was heretofore a great difficulty in those colonies; there are persons who were unfortunately regarded differently from others on account of their different outward appearance. These circumstances had a tendency to produce different shades in society; that the difficulty had existed for a great length of time, but wisdom—the humanity—the noble spirit—the splendid generosity of this country—has in effect put an end to these disparaging differences :—and what is the consequence to be desired ?—That an amalgamation of the different classes of society should take place, and that those shades and distinctions should be overlooked. My clients have informed the public that such a change is going on. As far as I can learn, it is proceeding gradually, but surely; and if not interrupted, will speedily increase in its progress; perhaps aided by nothing more than by religion, which, as in other parts of the world, so more especially in the colonies,

has shown its controlling influence over the passions of mankind. From the best authority in the island, on such a subject, I learn that such has been the effect most strikingly in Jamaica.

Already, also, men of colour in that island are engaged in the learned professions—are members of the Assembly—occupy responsible stations as magistrates and other officers;—and, I believe, those most immediately connected with the island will say that the public there are much indebted to the zeal, the intelligence, the integrity, and to the general conduct and example of the men of that description. I therefore say, that at this moment to do any thing which would have a tendency to mar the great work which is now going on—any thing which would have a tendency to exasperate the people in that island,—would be a most awful, as well as a most dangerous experiment. Sir, we must look back a little into our own history to see what has been the consequence of trifling with our colonies. It is monstrous to trifle with a colony in this new state of infant freedom, in which you have placed Jamaica and the other islands. For heaven's sake, encourage a spirit of peace and conciliation among them; do not send to them any measures which will have a tendency to exasperate, to disunite, and cause any breach of the bonds of society in that country, just emerging from slavery,—any thing which would destroy the happy union commencing amongst themselves; and, above all, I do implore this House of Commons to pause, and take care, before they set to the world so dangerous an example as destroying the popular constitution of a country upon such reasons as are suggested in the preamble of this Bill.

THE END.



LONDON:
Printed by James, Luke G. & Luke J. Hansard,
near Lincoln's-Inn-Fields.

8.







